IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 25, 2001 Session

STATE OF TENNESSEE v. ROSCOE W. FIELDS

Appeal from the Criminal Court for Anderson County
No. 97CR0282 James B. Scott, Judge

August 30, 2001

No. E2000-02495-CCA-R3-CD

The Defendant, Roscoe W. Fields, was convicted of driving a motor vehicle while his Tennessee driving privileges were suspended (Tenn. Code Ann. § 55-50-504) and violation of the motor vehicle registration laws (Tenn. Code Ann. § 55-50-504). The trial court sentenced the Defendant to an effective sentence of six (6) months probation. On appeal, he argues that: (1) the evidence was insufficient to convict him of driving a motor vehicle while his Tennessee driving privileges were suspended; and (2) he was denied his due process right to a fair trial. After a review of the record, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed.

THOMAS T. WOODALL, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and ROBERT W. WEDEMEYER, J., joined.

Roscoe W. Fields, Knoxville, Tennessee, *pro se.*

Paul G. Summers, Attorney General and Reporter; Patricia C. Kussmann, Assistant Attorney General; James Michael Taylor, District Attorney General; and Jan Hicks, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On June 16, 1997, Captain Avery Johnson, of the Anderson County Sheriff's Department, saw the Defendant at the courthouse in Anderson County. Captain Johnson suspected that the Defendant had driven to the courthouse that day, and knew that the Defendant's privileges to drive in the State of Tennessee had been suspended. Johnson had the dispatcher contact Deputy Randy Meyer, who was on duty as a patrol officer. In response to the dispatch, Deputy Meyer came to the courthouse and was given the information concerning Defendant by Captain Johnson. Deputy Meyer, with the Defendant's name and date of birth, went to his dispatcher's office and received confirmation through the computer system that Defendant's driving privileges in Tennessee were,

in fact, suspended.

Meyer obtained a description of Defendant's vehicle, and was advised that the Defendant had already left the courthouse. Meyer went to his patrol vehicle, and observed the Defendant drive out of the parking lot behind Union Planters Bank, approximately seventy-five (75) yards from the courthouse. The Defendant was driving a yellow Honda Accord. The Defendant turned onto Hicks Street in Clinton, and was followed by Meyer. Meyer noticed that the license tag on Defendant's vehicle had expired in August, 1992. He proceeded to turn on the blue lights of his patrol vehicle and stop the Defendant. After the Defendant stopped, Meyer approached the vehicle and requested to see Defendant's driver's license. The Defendant stated that he did not have one, and that he did not need one because of a "constitutional right." A certified copy of Defendant's "official driver record" with the State of Tennessee Department of Safety was admitted into evidence. It confirmed that Defendant's privileges to drive a motor vehicle in Tennessee were suspended.

I. ANALYSIS

A. Sufficiency of the Evidence

The Defendant contends that the evidence was insufficient to support his conviction for driving while his privileges to drive a motor vehicle had been suspended. We disagree.

When evaluating the sufficiency of the evidence, we must determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Keough, 18 S.W.3d 175, 180-81 (Tenn. 2000) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979)). On appeal of a conviction, we must afford the prosecution the strongest legitimate view of the evidence in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Keough, 18 S.W.3d at 181 (citing State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997)). Questions regarding the credibility of the witnesses, the weight to be given the evidence, and any factual issues raised by the evidence are resolved by the trier of fact. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997).

The Defendant argues that there was insufficient proof that his driving privileges had been suspended. Defendant also contends that it was impossible for the State to suspend his driving privileges in 1989, when his driver's license had expired in 1985. Tennessee Code Annotated Section 55-50-504 provides that "[a] person who drives a motor vehicle on any public highway of this state at a time when the person's privilege to do so is cancelled, suspended, or revoked commits a Class B misdemeanor." Tenn. Code Ann. § 55-50-504(a)(1). It is a prerequisite to conviction that the defendant's driver's license was legally cancelled, suspended or revoked prior to the time of the alleged crime. Veach v. State, 491 S.W.2d 81 (Tenn. 1973).

Officer Meyer testified that he stopped the Defendant for driving on a suspended license and that the Defendant's driving privileges were suspended on August 24, 1989. The Officer also testified that the Defendant's driver's license expired on April 3, 1985. Additionally, the State

offered a certified copy of the Defendant's driving record from the Department of Safety as evidence of the suspended status of the Defendant's driving license at the time of the offense. Therefore, it is clear, that the Defendant was driving his car when his right to operate a motor vehicle had been suspended by the State. Given this evidence, a reasonable jury could find that the elements of driving on a suspended license were proven beyond a reasonable doubt.

Moreover, we disagree with the Defendant's contention that his driving privileges could not be suspended, since his driver's license had expired. The Defendant cites to the Texas case of Allen v. State, 681 S.W.2d 38 (Tex. Crim. App. 1984), in which the Texas Court of Criminal Appeals held that a defendant could not be convicted of driving on a revoked license, because he had no license which could have been revoked. However, the Defendant's case is distinguishable from Allen, because rather than suspend the Defendant's expired *driver's license* the Tennessee Department of Safety suspended his *driving privileges*, as permitted by § 55-50-504(a)(1). Thus, the General Assembly has enacted legislation which authorizes the suspension of driving privileges of a person, whether or not that person has a valid license in effect at the time of the suspension, and criminalizes the act of operating a motor vehicle while the driving privileges have been suspended.

Additionally, we note that our supreme court has previously held that the right to drive a motor vehicle on a public highway is not a fundamental "right." See Goats v. State, 211 Tenn. 249, 364 S.W.2d 889, 891 (Tenn. 1963). Rather, it is a privilege, which may be revoked or suspended. Id., at 891. In State v. Booher, 978 S.W.2d 953 (Tenn. Crim. App. 1997), this Court stated that

> State and local governments possess an inherent power, i.e. police power, to enact reasonable legislation for the health, safety, welfare, morals, or convenience of the public. Thus, our legislature, through its police power, may prescribe conditions under which the "privilege" of operating automobiles on public highways may be exercised.

978 S.W.2d at 955 (footnote omitted) (citations omitted). Thus, the Defendant is not entitled to engage in certain privileges (i.e. driving while privileges are suspended) without complying with the requirements of the laws of the State of Tennessee. These laws serve to protect the rights, safety and well-being of all citizens, not just the Defendant. The Defendant is not entitled to relief on this issue.

B. Right to a Fair Trial

Next, the Defendant argues that he was denied his due process right to a fair trial, in that he did not receive proper notice of which charges would be tried on the day of his trial. The Defendant claims that he was unable to adequately prepare for trial, because he was not aware that he would have to defend the charges, which are the subject of this case. The State claims that this issue is waived, because the appellate record does not provide a copy of the Defendant's motion for a new trial, or the transcript of the motion. The State also submits that this issue is waived because the Defendant failed to raise an objection or request a continuance. In his reply brief, the Defendant asks

this Court to find that plain error exists.

We decline to find plain error in this case. The general rule is that appellate courts "will not consider issues that are not raised by the parties; however, plain error is an appropriate consideration for an appellate court whether properly assigned or not." State v. Walton, 958 S.W.2d 724, 727 (Tenn. 1997). However, the absence of an adequate record prevents appellate review of this issue.

Under Tennessee law, the appellant bears the burden of preparing a record of the trial court proceedings for appellate review. State v. Ballard, 855 S.W.2d 557, 560-61 (Tenn. 1993). An appellate court is precluded from considering an issue when the record does not contain a complete transcript or statement of what transpired in the trial court with respect to the issue raised. State v. Draper, 800 S.W.2d 489, 493 (Tenn. Crim. App. 1989). In such cases, we must presume that the trial court's rulings were supported by sufficient evidence. State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991). In addition, Rule 3(e) of the Tennessee Rules of Appellate Procedure states in part:

> [I]n all cases tried by a jury, no issue presented for review shall be predicated upon error in the admission or exclusion of evidence, jury instructions granted or refused, misconduct of jurors, parties or counsel, or other action committed or occurring during the trial of the case, or other ground upon which a new trial is sought, unless the same was specifically stated in a motion for a new trial; otherwise, such issues will be treated as waived.

Tenn. R. App. P. 3(e).

First, we note that the record on appeal does not contain the motion for a new trial or the contents of the hearing on the motion for new trial. Without a motion for new trial, we cannot be certain that this issue was raised by the Defendant. Second, the record does not reflect that the Defendant made any objection to having to try this case, given that he claims he was not aware that he was being tried for both of the charges in this case.

Third, we observe that the Anderson County Grand Jury returned a multi-count indictment against the Defendant, and numbered them Count 1 and Count 2. The record does not indicate that different case numbers were assigned to each count of the indictment. We find that, although the Defendant claims that he was not aware that he would be trying both counts, mandatory joinder of these offenses was required by Rule 8(a) of the Tennessee Rules of Criminal Procedure. Rule 8(a) states:

> **Mandatory Joinder of Offenses**. Two or more offenses shall be joined in the same indictment, presentment, or information, with each offense stated in a separate count, or consolidated pursuant to Rule 13 if the offenses are based upon the same conduct or arise from the same criminal episode and if such offenses are known to the appropriate prosecuting official at the time of the return of the indictment(s),

presentment(s), or information(s) and if they are within the jurisdiction of a single court. A defendant shall not be subject to separate trials for multiple offenses falling within this subsection unless they are severed pursuant to Rule 14.

Pursuant to Rule (8a), there would not be separate trials for the offenses alleged in Counts 1 and 2 of the indictment unless they had been severed pursuant to Rule 14. There is nothing in the record to indicate that the counts were severed, or that the Defendant requested a severance of the offenses. Therefore, because there is no motion for new trial in the record, and because there was no order declaring a severance of the offenses, we cannot address the merits of this issue, and the Defendant is not entitled to relief.

CONCLUSION

For the foregoing reasons, we affirm the judgments of the trial court.

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THOMAS T. WOODALL, JUDGE